

ORDINANCE NO. 2071 JAN 05 2004

GROWTH MANAGEMENT  
CITY OF SUMNER, WASHINGTON

**AN ORDINANCE** adopting amendments to the City of Sumner Natural Resource Lands and Critical Areas regulations amending Section 1 of Ordinance No. 1539 adopted in 1992; Section 1 of Ordinance No. 1541 adopted in 1992; Section 1 of Ordinance No. 1543 adopted in 1992; Section 1 of Ordinance No. 1544 adopted in 1992; Section 1 of Ordinance No. 1545 adopted in 1992; Section 1 of Ordinance No. 1546 adopted in 1992; Section 1 of Ordinance No. 1547 adopted in 1992; Section 1 of Ordinance No. 1551 adopted in 1992; Section 1 of Ordinance No. 1589 adopted in 1993; Sections 20, 21, 26 of Ordinance No. 1695 adopted in 1995; Sections 1 through 4, 5 and 6 of Ordinance No. 1906 adopted in 1999; and amending sections 16.40.030; 16.40.060; 16.40.100; 16.40.120; 16.40.135; 16.40.140; 16.40.150; 16.43.010; 16.44.050; 16.44.090; 16.48.040; 16.48.060; 16.48.090; 16.50.040; 16.50.050; 16.50.060; 16.50.090; 16.50.110; 16.50.130; 16.50.140; 16.52.040; 16.52.050; 16.52.060; 16.52.090; 16.54.030; 16.54.050; 16.54.060; 16.54.090; 16.56.010; 16.56.030; 16.56.050; 16.56.060; 16.56.070; 16.56.080; 16.56.090; 16.56.100; 16.58.100; and 16.58.110 of the Sumner Municipal Code; and adding new sections 16.40.210; 16.48.100; and 16.50.035 to the Sumner Municipal Code and repealing section 16.58.130 of the Sumner Municipal Code.

**WHEREAS**, the Planning Commission began the process of updating the Critical Areas Regulations in April 2001 and held numerous meetings in this two and a half year time period where public comment was received and;

**WHEREAS**, the Planning Commission held a duly advertised public hearing on March 6 and on July 10, 2003. Property owners adjacent to streams and wetlands were notified along with publication in the official city newspaper and in the Sumner Connection, a city-wide newsletter; and

**WHEREAS**, the Draft CARs have been revised to reflect comments heard from the public and state agencies particularly: 1) a revision to the buffer setback for mineral resource lands; 2) clarification on buffer requirements for streams; and 3) the removal of timber production as an agricultural activity; and

**WHEREAS**, the changes to the critical area and natural resource regulations as proposed are consistent with goals and policies of the Comprehensive Plan, the Zoning Code, best available science, and makes special consideration to anadromous fisheries per the GMA. Per comments from the Department of Ecology the update to the wetlands chapter will come at a later date; and

**WHEREAS**, a Determination of Non-Significance was issued on July 10, 2003, in accordance with the requirements of the State Environmental Policy Act and WAC 197-11-340(2); and

**WHEREAS**, on July 3, 2003, the proposed ordinance was submitted to the State Office of Community Development for 60-day Growth Management Act review; and



**WHEREAS**, the City Council held a duly advertised public hearing on December 15, 2003; and

**WHEREAS**, the proposed regulations are in compliance with the Sumner Comprehensive Plan and Sumner Zoning Code and consistent with the Sumner Shoreline Master Program;

**NOW, THEREFORE,**

**THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON**

**DO ORDAIN AS FOLLOWS:**

**Section 1.** That Section 1 of Ordinance No. 1539 adopted in 1992, and section 16.40.030 "Purpose", of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**"16.40.030 Purpose.**

The purpose of this chapter is to regulate the use of land in and around critical areas, resource lands, wildlife habitat, and natural hazard areas lying within the corporate limits of the city, to bring the city into compliance with the Washington State Growth Management Act (chapter 36.70A RCW); to incorporate appropriate "best available science" into the regulation of critical areas, resource lands, wildlife habitat, and natural hazard areas (chapter 36.70A.172(1) RCW); and to promote the public health, safety and general welfare in accordance with the standards established by the state and the city, and to:

A. Protect areas of land with valuable and non-renewable resources for future generations in a manner consistent with the current comprehensive plan until such time as a revised comprehensive plan determines the future use of such lands;

B. Regulate development on and around critical areas in order to protect lives, property and public infrastructure;

C. Prevent development which is incompatible with certain critical areas which are particularly susceptible to water quality, noise, and air quality impacts associated with nearby development;

D. Establish mechanisms to inform present and future landowners of their location on or near resource or critical lands;

E. Establish mechanisms to process and review development proposals for consistency with the new regulations which are fair, timely and minimize the impacts on permit processing times."

**Section 2.** That Section 1 of Ordinance No. 1539 adopted in 1992, and section 16.40.060 "Definitions", of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**"16.40.060 Definitions.**

For the purpose of this title, the following definitions shall apply:

"Action" means any grading, clearing, filling, construction, dredging, removal of trees or use on a piece of property.

"Activity" means any application for the following actions: building permit creating additional habitable space in a residential structure as defined by the Uniform Building Code;



building permit for a non-residential structure; conditional use approval; shoreline permit; rezone; planned residential development; planned mixed-use development; shoreline variance or conditional use; shoreline redesignation; subdivision of land; SEPA review or other similar land use or environmental discretionary review.

“Agricultural resource lands” means lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products.

“Animal containment area” means a site where two or more animal units of large animals per acre or 0.75 of an animal unit of small animals per acre are kept, and where a high volume of waste material is deposited in quantities capable of impacting groundwater resources.

“Animal unit” means the equivalent of 1,000 pounds of animal.

“Applicant” means a person, party, firm, corporation, or other legal entity who files an application for approval under this title and who is either the owner of the land on which that proposed activity would be located, a contract vendee, or lessee of the land, the person who would actually control and direct the proposed activity, or the authorized agent of such a person.

“Aquifer recharge area” means areas that have a critical recharging effect on groundwaters used for potable water supplies and/or that demonstrate a high level of susceptibility or vulnerability to groundwater contamination from land use activities.

Examples of aquifer recharge areas include:

1. Wellhead protection areas delineated pursuant to the Federal Safe Drinking water Act; and

2. Other areas with a high level of susceptibility or vulnerability to contamination as demonstrated through the use of the DRASTIC Model.

“Best management practices (BMPs)” mean physical, structural, and/or managerial practices, that when used singly or in combination, prevent or reduce water pollution, erosion, groundwater contamination, slope instability and similar impacts of construction, development and other actions. Source control BMPs include those which keep the pollutant from ever coming in contact with stormwater, and stormwater treatment BMPs include those which consist of various methods of treating stormwater. BMPs could include, but are not limited to, use of hay bales and plastic coverings to reduce erosion, education programs for employees regarding the use and disposal of chemicals, signage for customers regarding use of gasoline fueling facilities, and use of grass-lined swales to reduce pollutants in stormwater.

“Building official” means the city staff person responsible for the administration of the Uniform Building Code or his or her designee.

“Clearing” means the removal of vegetative material such as timber, stumps, brush, sod, etc., that does not require reforestation per an approved Forest Practices Application/notification from the Department of Natural Resources.

“Contaminant” means any chemical, physical, biological or radiological substance that does not occur naturally or occurs at concentrations and duration as to be injurious to human health or welfare or shown to be ecologically damaging.

“Construction” refer to the definition in the zoning code, chapter SMC 18.04.

“Critical areas” are those areas established as volcanic hazard areas, wetlands, flood hazard areas, fish and wildlife habitat areas, seismic hazard areas, landslide hazard areas, erosion hazard areas, and aquifer recharge areas.

“Development” refer to the definition in the zoning code, chapter SMC 18.04.

“Director” means the director of the Sumner department of community development and parks or his or her designee.



"DRASTIC" means a model developed by the National Water Well Association and Environmental Protection Agency used to measure aquifer susceptibility to contamination.

"Existing agricultural properties" are those properties which have not been converted to non-agricultural use or have not lain idle more than five years, unless the idle land is registered in a federal or state soil conservation program.

"Facility" for purposes of aquifer protection regulations means all structures, contiguous land, appurtenances, and other improvements on the land used for recycling, reusing, reclaiming, transferring, storing, treating, disposing of, or otherwise handling a hazardous substance. Use of the term facility includes underground and aboveground tanks, and operations which handle, use, dispose of, or store hazardous substances.

"Financial guarantee" means a letter of credit, certified bond, assignment of funds or other instrument acceptable to the city to insure the satisfactory compliance with conditions or standards of this title.

"Footprint" means the area of a building site bounded by foundation walls or equivalent to the area of the site covered by structures if no foundation walls are present.

"Hazardous substance(s)" means any liquid, solid, gas, or sludge, including any materials, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the characteristics or criteria of hazardous waste; and including waste oil and petroleum products.

"Hazardous substance processing or handling" means the use, storage, manufacture, or other land use activity involving hazardous substances, but does not include individually packaged household consumer products or quantities of hazardous substances of less than five gallons in volume per container. Hazardous substances shall not be disposed of on-site unless in compliance with Dangerous Waste Regulations, chapter 173-303 WAC, and any pertinent local ordinances, such as sewer discharge standards.

"Hazardous waste" means and includes all dangerous waste and extremely hazardous waste as designated pursuant to chapter 70.105 RCW, chapter 173-303 WAC.

"Hazardous waste treatment and storage facility" means a facility that treats and stores hazardous waste and is authorized pursuant to chapter 70.105 RCW, chapter 173-303 WAC. It includes all contiguous land and structures used for recycling, reusing, reclaiming, transferring, storing, treating, or disposing of hazardous waste. Treatment includes using physical, chemical, or biological processing of hazardous wastes to make such waste non-dangerous or less dangerous and safer for transport, amenable for energy or material resource recovery. Storage includes the holding of waste for a temporary period but not the accumulation of waste on the site of generation as long as the storage complies with applicable state requirements.

"Landslide hazard area – Type I" means a slope of 25 percent or greater.

"Landslide hazard area – Type II" means a slope of less than 25 percent and equal to or greater than 15 percent.

"Minerals" includes gravel, sand, and valuable metallic substances. Topsoil is not a mineral.

"Mineral resource lands" means lands primarily devoted to the extraction of minerals or that have known or potential long-term commercial significance for the extraction of minerals.

"Natural resource lands" mean all areas classified as mineral resource lands or agricultural resource lands.

"Non-exempt activity" means any activity which is not exempted from the development standards of this division.

"One-year time travel zone boundary" means the maximum distance around a pumping well from which a contaminant hypothetically present in groundwater could travel to the well within a one-year time period.



"Sludge land application site" means a site where stabilized sludge, septage, and other organic wastes are applied to the surface of the land in accordance with established agronomic rates for fertilization or soil conditioning. Sludge land application sites are classified under the following five-category system:

- S-1 Sites of less than one acre with an application rate of less than 10 dry tons of sludge per acre per five-year period.
- S-2 Sites of less than 40 acres with an application rate of less than 20 dry tons of sludge per acre per 10-year period or less than an annual application of two dry tons of sludge per acre.
- S-3 Sites with an application rate of more than 20, but less than 43 dry tons of sludge per 10-year period or 4.3 dry tons per acre per year.
- S-4 Sites with one-time applications greater than 43 dry tons per acre and cumulative limits for metals greater than state designated practices for agricultural cropland application.
- S-5 Sites which are permanent landfill disposal facilities.

"Small animal" means an animal with an average weight of less than 100 pounds.

"TBA" means transferable buffer area. The transferable buffer areas shall not include areas of improved right of way within the wildlife habitat area buffer or wetland buffer.

"Ten-year time travel zone boundary" means the maximum distance around a pumping well from which a contaminant hypothetically present in groundwater could travel to the well within a ten-year time period.

"TPCHD" means the Tacoma-Pierce County health department.

"Underground tank" means any one or a combination of tanks (including underground pipes connected thereto) which are used to contain or dispense an accumulation of hazardous substances or hazardous wastes, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground.

"Use" refer to the definition in the zoning code, SMC 18.04.

"USGS" means the United States Geologic Survey.

"Utility line" means pipe, conduit, cable or other similar facility by which services are conveyed to the public or individual recipients. Such services shall include, but are not limited to, water supply, electric power, gas, communications, storm sewers (except open-ditches) and sanitary sewers.

"Wellhead protection area" means the area within the ten-year time-of-travel zone boundary of a group A public water system well, as delineated by the water system purveyor or its designee, pursuant to WAC 246-290-135."

**Section 3.** That Section 1 of Ordinance No. 1539 adopted in 1992, and section 16.40.100 "Exemptions", of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**"16.40.100 Exemptions.**

The following activities shall be exempt from the provisions of this division unless specifically modified in other sections of this division. All activities in critical areas must comply with SMC 16.40.110 best management practices regardless of exemption status. These exemptions apply specifically to activities regulated by the City of Sumner. Other state and federal permits and approvals may still apply.



1. Such projects are part of an approved local, state, or federal restoration or enhancement plan; and
2. That the project would not result in adverse impacts to any critical area.”

**Section 4.** That Section 20 of Ordinance No. 1695 adopted in 1995, and section 16.40.120 “Reasonable use exception”, of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**“16.40.120 Variances**

A. The purpose of a variance is strictly limited to granting relief to specific development standards set forth in this division. A variance is also appropriate where there are extraordinary or unique circumstances relating to the property such that the strict implementation of this division would impose unnecessary hardships on the applicant. These provisions should be applied in a manner, which while protecting the environment, will assure that a person will be able to use his/her property in a fair and equitable manner.

B. In all instances of granting a variance, extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.

C. An application for a variance shall be processed as a Type IV decision pursuant to chapter SMC 18.56, Procedures for Land Use Permits. An application for variance shall be submitted on forms provided by the City and accompanying material as required by SMC 18.56.

D. Criteria for Granting Variances. Variances for development that will be located landward of the ordinary high water mark, may be authorized provided the applicant can demonstrate all of the following:

1. That the strict requirements of the development standards set forth in this division preclude or significantly interfere with a reasonable use of the property not otherwise prohibited by the this division.

2. That the hardship described above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of this division, and not, for example, from deed restrictions or the applicant's own actions.

3. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the critical area.

4. That the variance authorized does not constitute a grant of special privilege not enjoyed by other properties in the area, and will be the minimum necessary to afford relief.

5. That the public interest will suffer no substantial detrimental effect. Variances for development that will be located either waterward of the ordinary high water mark or within regulated wetlands may be authorized provided the applicant can demonstrate all the criteria stated above as well as the following:

- a. That the strict application of the development standards set forth in this division precludes all reasonable use of the property; and

- b. That the proposal is consistent with the criteria established under subsections (1) through (4) of section D above.

E. In the granting of all variances, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other developments in the area where similar circumstances exist, the total of the variances should not produce substantial adverse effects to the critical areas.



F. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service shall be sent a notice of application for any variance requesting the reduction of buffer widths on Type 3 streams."

**Section 5.** That Section 21 of Ordinance No. 1695 adopted in 1995, and section 16.40.135 "Application and review process", of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**"16.40.135 Application and review process for RWHA permit.**

A. Activities which require resource, wildlife and hazard area approval shall be processed as Type I or Type II decisions as applicable pursuant to chapter 18.56 SMC, Procedures for Land Use Permits.

B. Following application for RWHA review, the director may refer the application and accompanying materials to appropriate state, federal, local and city agencies and departments for review and comment.

C. The director may apply conditions to the approval in order to ensure the conformance with standards or policies and to ensure that construction occurs in compliance with the standards and other conditions."

**Section 6.** That Sections 1 through 4 of Ordinance No. 1906 adopted in 1999, and section 16.40.140 "Clustering", of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**"16.40.140 Clustering.**

The clustering of development on portions of property shall be allowed subject to the following standards:

A. For residentially zoned areas subject to chapter 16.46 SMC, wetlands, and chapter 16.56 SMC, wildlife habitat areas, the area of land established in buffers is equal to the "transferable buffer area" (TBA).

1. Clustering may apply to planned residential developments approved pursuant to chapter 18.40 SMC or to new subdivisions pursuant to chapter 17.16 SMC.

2. In the case of planned residential developments, the density may be increased beyond that provided for in SMC 18.24.060 provided the transferable buffer area is established as a separate conservation easement, dedication or other permanent method of preserving the land to the satisfaction of the director. The transfer rate for PRDs shall be one (1) additional acre of development area credit for each two (2) acres of transferable buffer area.

3. In the case of a full subdivision, the density allowed by the zoning may be increased beyond the limits of the underlying zoning according to the following table:

Zoning	Cluster Ratio
LDR-12	1 acre credit for 2 TBA acres
LDR-8.5	1 acre credit for 3 TBA acres
LDR-7.2	1 acre credit for 5 TBA acres
LDR-6	1 acre credit for 5 TBA acres

The increase in density and resulting maximum number of lots shall be calculated using the following formula:

$$\frac{(\text{TBA} \times \text{Cluster Ratio}) + (\text{Developable Area})}{\text{Minimum Lot Size of Underlying Zone}} = \text{Maximum Number of Lots}$$



4. In no case shall the lot size be reduced to less than the minimum set forth below, in square feet:

LDR-6:	4,800
LDR-7.2:	6,000
LDR-8.5:	7,200
LDR-12:	8,500

In no case shall the reduction in lot sizes be combined with the reduction in lot sizes allowed in SMC 18.12.070(A) or 18.12.090(A).

5. The utilization of the transferable buffer area credits shall accompany a development proposal for the PRD or subdivision. The use of the credits shall be approved by the city council in conjunction with the PRD or preliminary plat.

6. In the case of a full subdivision, the TBA shall be established as a separate conservation easement, dedication or other permanent method of preserving the land to the satisfaction of the director.

7. In allowing lots less than 6,000 square feet, the council may reduce the rear yard requirements by a maximum of 40 percent.

B. For residentially zoned areas subject to chapter 16.58 SMC, flood hazard areas, the area of land within the floodfringe or within areas classified as deep and/or fast flowing water are equal to the "transferable buffer area" (TBA), provided any area within 200 feet of the shoreline pursuant to the shoreline master program shall not be included in the TBA. Properties with such flood hazard designations are eligible to modify lot size requirements to achieve clustering.

1. Development transfers may apply to planned residential developments approved pursuant to chapter 18.40 SMC or to a new subdivision pursuant to chapter 17.16 SMC.

2. In the case of planned residential developments, the density may be increased beyond that provided for in SMC 18.24.060 provided the transferable buffer area is established as a separate conservation easement, dedication or other permanent method of preserving the land to the satisfaction of the director. The transfer rate for PRDs shall be one (1) additional acre of development area credit for each two (2) acres of transferable buffer area.

3. In the case of a full subdivision, the density allowed by the zoning may be increased beyond the limits of the underlying zoning according to the following table:

Zoning	Cluster Ratio
LDR-12	1 acre credit for 2 TBA acres
LDR-8.5	1 acre credit for 3 TBA acres
LDR-7.2	1 acre credit for 5 TBA acres
LDR-6	1 acre credit for 5 TBA acres

The increase in density and resulting maximum number of lots shall be calculated using the following formula:

$$\frac{(\text{TBA} \times \text{Cluster Ratio}) + (\text{Developable Area})}{\text{Minimum Lot Size of Underlying Zone}} = \text{Maximum Number of Lots}$$

4. In no case shall the lot size be reduced to less than the minimum set forth below, in square feet:

LDR-6:	4,800
LDR-7.2:	6,000
LDR-8.5:	7,200
LDR-12:	8,500



In no case shall the reduction in lot sizes be combined with the reduction in lot sizes allowed in SMC 18.12.070(A) or 18.12.090(A).

5. The utilization of the transferable buffer area credits shall accompany a development proposal for the PRD or subdivision. The use of the credits shall be approved by the city council in conjunction with the PRD or preliminary plat.

6. In the case of full a subdivision, the TBA shall be established as a separate conservation easement, dedication or other permanent method of preserving the land to the satisfaction of the director.

7. In allowing lots less than 6,000 square feet, the council may reduce the rear yard requirements by a maximum of 40 percent.

C. For industrial and commercial zoned areas subject to chapter 16.46 SMC, wetlands, and chapter 16.56 SMC, fish and wildlife habitat areas, the area of land established in buffers is equal to the "transferable buffer area" (TBA). Properties with such flood hazard designations are eligible to modify lot size requirements to achieve clustering.

1. Development transfers may apply to properties zoned industrial or commercial.

2. The density may be increased provided the transferable buffer area is established as a separate conservation easement, dedication or other permanent method of preserving the land to the satisfaction of the director. For each acre of TBA, an additional acre of non-TBA land on the same property may increase the allowable building height by 12 feet for structures in the non-TBA portion of the property.

3. The utilization of the transferable buffer area credits shall be approved by the hearing examiner according to the process for an administrative conditional use, chapter 18.56 SMC, provided the following are satisfied:

a. The TBA transfer is established with a permanent easement, property transfer or other mechanism to ensure the long-term protection of the area; and

b. The applicant has provided improvements, as necessary, to enhance the function and performance of the TBA; and

D. For industrial and commercial zoned areas subject to chapter 16.58 SMC, flood hazard areas, the area of land established in the floodfringe and areas of deep and/or fast flowing water are equal to the "transferable buffer area" (TBA) provided any area within 200 feet of the shoreline pursuant to the shoreline master program shall not be included in the TBA. Properties with such flood hazard designations are eligible to modify lot size requirements to achieve clustering.

1. Development transfers may apply to properties zoned industrial or commercial.

2. The density may be increased provided the transferable buffer area is established as a separate conservation easement, dedication or other permanent method of preserving the land to the satisfaction of the director. For each acre of TBA, an additional acre of non-TBA land on the same property may increase the allowable building height by 12 feet for structures in the non-TBA portion of the property.

3. The utilization of the transferable buffer area credits shall be approved by the hearing examiner according to the process for an administrative conditional use, chapter 18.56 SMC, provided the following are satisfied:

a. The TBA transfer is established with a permanent easement, property transfer or other mechanism to ensure the long-term protection of the area; and

b. The applicant has provided improvements, as necessary, to enhance the function and performance of the TBA; and

E. In the event an area is within more than one transferable buffer area, the applicant may benefit from only one type of TBA for a given area of land."



**Section 7.** That Section 1 of Ordinance No. 1539 adopted in 1992, and section 16.40.150 "Relationship to other regulations", of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**"16.40.150 Relationship to other regulations.**

A. Variance applications from the provisions of the zoning regulations shall be made according to the provisions of chapter 18.50 SMC.

B. This division establishes minimum standards which are to be applied to specific activities on natural resource lands and in critical areas in order to achieve the purposes stated. In no way is this division intended to limit the application of SEPA or any other city, county, state or federal law or regulation.

C. Requests for varying the use to which a critical area habitat is to be put are not requests for variances, but rather requests for conditional uses. Such requests shall be evaluated using the zoning conditional use criteria set forth in 18.48 SMC."

**Section 8.** That a new section 16.40.210 "Notice of amendments", is hereby added to the Sumner Municipal Code and adopted to read as follows:

**"16.40.210 Notice of Amendments**

The U.S. Fish and Wildlife Service and the National Marine Fisheries Service shall receive early and continual notice of any amendments to Division III, Title 16, Natural Resource Lands and Critical Areas."

**Section 9.** That Section 1 of Ordinance No. 1589 adopted in 1993, and section 16.43.010 "Definitions", of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**"16.43.010 Definitions.**

For the purposes of this chapter the following definitions shall apply:

A. "Agricultural activity" means a condition or activity which occurs on a farm in connection with recreational and/or commercial use or production of farm products and includes, but is not limited to marketed produce at roadside stands or farm markets; noise; odors; dust; fumes; smoke; operation of machinery and pumps; movement including but not limited to, use of current city roads and ditches, streams, rivers, canals, and drains, and use of water for agricultural activities; ground and aerial application of seed, fertilizers, conditioners and plant protection products; employment and use of labor; roadway movement of equipment and livestock; protection from damage by wildlife; prevention of trespass; construction and maintenance of buildings, fences, roads, bridges, ponds, drains, waterways and similar features, and maintenance of stream banks, and watercourses; and conversion from one agricultural activity to another.

B. "Farm" means the land, buildings, manure lagoons, ponds, freshwater culturing and growing facilities, and machinery used in commercial production of farm products.

C. "Farmland" means land or freshwater ponds devoted primarily to the production, for commercial purposes, of livestock, freshwater aquaculture or other agricultural commodities.

D. "Farm product" means those plants and animals (and the products thereof) useful to human beings which are produced on farms, and include, but are not limited to, forages and sod crops, grain and feed crops, dairy and dairy products, poultry products, livestock, including breeding, grazing and feed lots, fruits, vegetables, flowers, seeds, grasses, nursery products, trees and forest products, including Christmas trees, freshwater fish and fish products, rabbits,



apiaries, equine and similar products, or any other product which incorporates the use of food, feed, fiber or fur.

E. "Generally accepted agricultural and best management practices" means sound, economically feasible farming techniques and best management practices as defined and/or recommended by the American Society of Agronomy, United States Department of Agriculture Natural Resource Conservation Service, Washington State Cooperative Extension Service, and other professional or industrial agricultural organizations.

F. "Person" means an individual, facility, partnership, copartnership, firm, company, association, joint-stock company, corporation, government entity or agent."

**Section 10.** That Section 1 of Ordinance No. 1541 adopted in 1992, and section 16.44.050 "Applicability", of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**"16.44.050 Applicability.**

Mineral resource lands are lands primarily devoted to the extraction of minerals or that have known or potential long-term significance for the extraction of the minerals."

**Section 11.** That Section 26 of Ordinance No. 1695 adopted in 1995, and section 16.44.090 "Regulations", of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**"16.44.090 Regulations.**

A. A surface mining permit approval shall be required for all surface mining operations except the following:

1. Excavation for the construction of public facilities and appurtenances for water, sewer, streets, or other underground utilities;
2. Any grading less than 1,000 cubic yards;
3. Any grading directly associated with a valid building permit for construction of a structure on the same lot;
4. Excavation of materials in order to maintain a drainage or floodway facility;
5. Grading or excavation associated with an active agricultural activity;
6. Surface mining operations in existence prior to the adoption of the ordinance codified in this chapter, except that actions by an existing surface mining operation which require other permits, shall trigger the provisions of this section.

B. Surface mining permit applications shall be submitted and reviewed as conditional uses pursuant to chapter 18.48 SMC, Conditional Uses, and the procedures and fees established in chapter 18.56 SMC, Procedures for Land Use Permits.

C. The following standards shall apply to the approval of a surface mining permit:

1. A site plan showing the vicinity, appropriate information about the property owner and operator, fencing plan, location of utilities and site access points, contours of the existing site conditions at five-foot intervals, cross-sections of the site as determined necessary by the director, and location of any structures or equipment on the site shall be provided.
2. A phasing and operation plan is provided showing the type of operation existing or proposed on-site, phasing of the expansion, length of operation, hours of operation, methods for stabilizing cut slopes, and measures to reduce erosion, water quality, transportation and other impacts resulting from the operation.



3. The operation and site layout shall be such that noise, traffic, erosion, water quality, habitat, and other impacts of the operation are adequately mitigated.

4. Fencing, landscaping and/or berms may be required in order to secure the site, provide buffers between the site and nearby residential uses or zones, and reduce noise and erosion impacts.

5. No blasting shall be allowed.

6. The applicant may be required to provide status reports on a regular basis in order to verify compliance to the city standards.

7. Operations which could generate dust shall be reviewed by the regional air quality agency.

8. No excavation shall occur within 30 feet of a property line on the perimeter of the site.

9. Measures shall be provided to keep adjacent streets clear of dust, dirt and rocks.

10. A rehabilitation plan shall be provided for all new facilities in order to document how the site will be restored or rehabilitated following abandonment."

**Section 12.** That Section 1 of Ordinance No. 1543 adopted in 1992, and section 16.48.040 "Relationship to framework ordinance", of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**"16.48.040 Relationship to framework ordinance.**

The provisions of this chapter shall apply in conjunction with SMC 16.40.030 through 16.40.210."

**Section 13.** That Section 1 of Ordinance No. 1543 adopted in 1992, and section 16.48.060 "Mapping", of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**"16.48.060 Mapping.**

Aquifer recharge areas are those areas defined as follows:

A. Areas with the two highest DRASTIC zones which are rated 180 and above on the DRASTIC index range, as identified in Map of Groundwater Pollution Potential, Pierce County, Washington, National Water Well Association, U.S. Environmental Protection Agency; or

B. Wellhead protection areas designated for water supply wells and springs (pursuant to WAC 246-290-135) and located within the municipal boundary of the City of Sumner."

**Section 14.** That Section 1 of Ordinance No. 1543 adopted in 1992, and section 16.48.090 "Regulations", of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**"16.48.090 Regulations.**

A. The following uses of land shall require a hydrogeologic assessment of the proposed site if the site is located in an aquifer recharge area, except that uses in subparagraph (3) need only provide an assesment of nitrate contamination:

1. Hazardous substance processing or handling;

2. Hazardous waste treatment, storage or disposal facility;

3. Disposal of on-site generated sewage for subdivisions, and commercial and industrial developments;



4. Sludge land application sites categorized as S-3, S-4, and S-5, as defined in this division;

5. Animal containment areas;

6. Landfills;

7. Sewage treatment plants for off-site generated sewage.

8. Mining

B. The hydrogeologic assessment shall be prepared by a qualified professional who is a hydrogeologist, geologist, or engineer, who is licensed in the state of Washington and has experience in preparing hydrogeologic assessments and shall include, but is not limited to:

1. Geologic setting;

2. Groundwater survey information, groundwater elevations, background water quality, direction and gradient of groundwater flow, location/depth of perched water tables, recharge potential (permeability and transmissivity);

3. Survey of nearby wells and springs, including all wells and springs within 1,000 feet of the site;

4. Location of nearby surface water and recharge potential;

5. Description of water supply to the site;

6. Information sources for assessment, including any well logs or borings used;

7. Discussion of the effects of the proposed project on the groundwater resource;

8. Recommendations to mitigate the adverse impacts of the project on the groundwater resource;

9. Other information as required by the Tacoma-Pierce County health department (TPCHD).

C. The director shall forward the assessment to the TPCHD for review. The applicant shall be responsible for paying any review costs required by the TPCHD. Based on the review by the TPCHD the proposal shall be either approved, approved with conditions or denied. Conditions may be imposed to reduce the impacts of the proposal on the aquifer, reduce the risk of contamination, and to protect the long-term viability of the water resource. A proposal may be denied upon a finding that feasible mitigating measures are not sufficient to reduce the contamination risk.

D. The following activities and uses are prohibited within one-year time-of-travel zones for any wellhead protection area:

1. Landfills, including hazardous or dangerous waste, municipal solid waste, special waste, woodwaste, and inert and demolition waste landfills;

2. Underground injection wells that are Class I, III, and IV wells and subclasses 5F01, 5D03, 5F04, 5W09, 5W10, 5W11, 5W31, 5X13, 5X14, 5X15, 5W20, 5X28, and 5N24 of Class V wells;

3. Wood Treatment Facilities. Wood treatment facilities that allow any portion of the treatment process to occur over permeable surfaces (both natural and manmade);

4. Storage, processing, or disposal of radioactive substances. Facilities that store, process, or dispose of radioactive substances;

5. Community septic systems; and

6. Other:

a. Activities that would significantly reduce the recharge to aquifers currently or potentially used as a potable water source;

b. Activities that would significantly reduce the recharge to aquifers that are a source of significant baseflow to a regulated stream;

c. Activities that are not connected to an available sanitary sewer system are



prohibited from critical aquifer recharge areas associated with sole source aquifers.”

**Section 15.** That a new section 16.48.100 “Performance Standards-Specific Uses”, is hereby added to the Sumner Municipal Code and adopted to read as follows:

**“16.48.100 Performance Standards-Specific Uses**

The following are performance standards for specific uses within the one-year time-of-travel zones for wellhead protection areas:

A. All storage tanks proposed must comply with local building code requirements and must conform to the following requirements:

1. All new underground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:

a. Prevent releases due to corrosion or structural failure for the operational life of the tank;

b. Be protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed to include a secondary containment system to prevent the release or threatened release of any stored substances; and,

c. Use material in the construction or lining of the tank that is compatible with the substance to be stored.

2. All new aboveground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:

a. Not allow the release of a hazardous substance to the ground, ground waters, or surface waters;

b. Have a primary containment area enclosing or underlying the tank or part thereof; and

c. A secondary containment system either built into the tank structure or a dike system built outside the tank for all tanks.

B. Vehicle repair and servicing

1. Vehicle repair and servicing must be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a manner that protects them from weather and provides containment should leaks occur.

2. No dry wells shall be allowed on sites used for vehicle repair and servicing. Drywells existing on the site prior to facility establishment must be decommissioned and mitigated using techniques approved by the state Department of Ecology prior to commencement of the proposed activity.

C. Application of household pesticides, herbicides, and fertilizers shall not exceed times and rates specified on the packaging.

D. Water reuse projects for reclaimed water must be in accordance with the adopted water or sewer comprehensive plans that have been approved by the departments of Ecology and Health.

1. Surface spreading must meet the ground water recharge criteria given in Chapter 90.46.080 RCW and Chapter 90.46.010(10).

2. Direct injection must be in accordance with the standards developed by authority of Chapter 90.46.042 RCW.

E. All uses and development within and aquifer recharge area shall be in accordance with applicable state and federal regulations.”



**Section 16.** That a new section 16.50.035 "Exemptions", is hereby added to the Sumner Municipal Code and adopted to read as follows:

**"16.50.035 Exemptions**

The following activities are exempt from this chapter:

- A. Approved mining activities on mineral resource lands pursuant to chapter 16.44 SMC."

**Section 17.** That Section 1 of Ordinance No. 1544 adopted in 1992, and section 16.50.040 "Relationship to framework ordinance", of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**"16.50.040 Relationship to framework ordinance.**

The provisions of this chapter shall apply in conjunction with SMC 16.40.030 through 16.40.210."

**Section 18.** That Section 1 of Ordinance No. 1544 adopted in 1992, and section 16.50.050 "Applicability", of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**"16.50.050 Applicability.**

A. Unless otherwise stated, landslide hazard areas are those areas subject to risk of mass movement and meeting any of the following criteria:

1. Areas of historic land failures, including areas of unstable old and recent landslides;
2. Areas with all <sup>four</sup> of the following characteristics:
  - a. Slopes steeper than 15 percent; and
  - b. Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and
  - c. Any signs of springs or groundwater seepage; and
  - d. Concave slopes and swales;
3. Slopes that are parallel or sub-parallel to planes of weakness, such as bedding planes, joint systems, and fault planes, in subsurface materials;
4. Slopes having gradients steeper than 80 percent subject to rockfall during seismic shaking;
5. Areas potentially unstable as a result of rapid stream incision, stream bank erosion, and undercutting by wave action;
6. Any area with a slope of 15 percent or steeper and with a vertical relief of 10 or more feet. A slope is delineated by establishing the toe and top and measured by averaging the inclination over at least 10 feet of vertical relief. Qualifying slopes of 15 percent or greater to less than 25 percent shall be termed "Type II landslide hazard areas" for purposes of this chapter. Qualifying slopes of 25 percent or greater shall be termed "Type I landslide hazard areas";
7. Areas which have a "severe" limitation for building site development because of slope conditions, according to the U.S. Department of Agriculture's Natural Resource Conservation Service;
8. Slopes that contain impermeable soils (typically silt and clay) frequently interbedded with granular soils (predominately sand and gravel);
9. Any area which has indications of mass wasting during the Holocene epoch (from ten thousand (10,000) years ago to the present) or which is underlain by mass wastage debris of that epoch.



B. Erosion hazard areas are those areas that are identified by the presence of vegetative cover, soil texture, slope, and rainfall patterns, or human-induced changes to such characteristics, which create site conditions which are vulnerable to excessive erosion. Erosion hazard areas are those areas that are classified as having moderate to severe, severe or very severe erosion potential according to the Natural Resource Conservation Service."

**Section 19.** That Section 1 of Ordinance No. 1544 adopted in 1992, and section 16.50.060 "Mapping", of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**"16.50.060 Mapping.**

Areas meeting the criteria established above may be delineated in the following documents:

A. Soil Survey of Pierce County Area, Washington, 1979, Soil Conservation Service, United States Department of Agriculture (USDA);

B. Areas designated as slumps, earthflows, mudflows, lahars, or landslides on maps published by the United States Geologic Survey or Washington Department of Natural Resources Division of Geology and Earth Resources;

C. Existing or newly developed topographic surveys prepared by the city, USGS, state, or by applicants or their representative.

D. The actual presence or location of an active landslide hazard area and/or additional potential landslide hazard areas that have not been mapped, but may be present on or adjacent to a site, shall be evaluated using the site evaluation procedures established in this chapter."

**Section 20.** That Section 1 of Ordinance No. 1544 adopted in 1992, and section 16.50.090 "Submittal requirements", of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**"16.50.090 Submittal requirements.**

A. For all non-exempt activity proposed within a Type I landslide hazard area, a site evaluation shall be submitted; provided, where an applicant can demonstrate through submittal of a geotechnical letter, that there are no Type I landslide hazard areas on-site, the requirement for the site evaluation as set forth in subsection (B) may be waived. The geotechnical letter shall include at a minimum the following:

1. A brief description of the project (including the proposed land use) and a description of the area to be developed.

2. A paragraph that states the following specific language: "The services described in this report were prepared under the responsible charge of (Individual's Name). (Individual's Name) meets the qualifications contained in Title 16, Section 16.50.090 to prepare a landslide hazard geological assessment. (Individual's Name) understands the requirements of the current Landslide Hazard Area Chapter 16.50 and the definitions of the applicable terms contained within Chapter 16.04. Individuals under the responsible charge of (Individual's Name) have performed a landslide hazard geological assessment, conducted a field investigation, and researched historic records on or in the vicinity of the above referenced site. In my opinion, the scope of services completed for this project is adequate to meet the requirements of the Sumner Municipal Code and it does not appear that an active landslide hazard area exists on site."

3. The geotechnical letter shall be prepared under the responsible charge of an appropriately licensed geotechnical professional(s) and be signed, sealed and dated by the geotechnical professional(s).



B. The site evaluation shall address the existing geologic, topographic, and hydrologic conditions on a site, including an evaluation of the ability of the site to accommodate the proposed activity. The site evaluation shall include at a minimum the following:

1. Topographic data showing the site with a maximum five-foot contour interval. Slopes shall be clearly delineated for the ranges between 15 and 24 percent, and 25 percent or greater, including calculations for areal coverage of each slope category on the site. When site conditions indicate the necessity, the department may require the topographic data to be field surveyed and/or may require that a contour interval of one foot be used.

2. Site history data describing prior uses, grading, soil instability, or slope failures on the property.

3. Geotechnical report prepared by a professional engineer, geologist, engineering geologist, or hydrogeologist, licensed by the state of Washington with expertise in geotechnical engineering. The report shall include the following:

- a. Results from boring logs, exploration pits, and any other exploration methods;
- b. Data concerning the vulnerability of the site to unusual seismic events;
- c. Slope stability analysis and opinion(s) regarding the stability of the slope;
- d. Proposed angles of cut and fill slopes and site grading requirements;
- e. Structural foundation requirements and estimated foundation settlements;
- f. Soil compaction criteria;
- g. Proposed surface and subsurface drainage and calculations regarding design;
- h. Lateral earth pressure values and calculations for all lateral pressure walls;
- i. Suitability of on-site material for fill;
- j. Laboratory data and soil index properties for soil samples; and
- k. Any additional information necessary for the director to determine the stability of the site and adjacent properties.

4. Location of all vegetation, including location and description of all trees and shrubs over three inches diameter measured five feet above the base of the trunk.

5. Grading plans showing all proposed grading activity, timing of construction, location of existing and proposed structures, location of underground utilities, location of any required buffers or conservation easements, and location and nature of any off-site improvements which are associated with the activity.”

**Section 21.** That Section 1 of Ordinance No. 1544 adopted in 1992, and section 16.50.110 “Performance standards”, of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**“16.50.110 Performance standards.**

The following standards shall apply to all actions in Type I and Type II landslide hazard areas:

A. All disturbed areas on the site, including areas proposed for disturbance, shall be controlled in a manner sufficient to control drainage and prevent erosion during construction consistent with SMC 16.05, and revegetated as soon as possible to promote drainage control and prevent erosion during and after construction. In cases where erosion potential could threaten the stability of the site, the director may require a revegetation plan be submitted and implemented prior to permit issuance.

B. The director may restrict development coverage and construction activity areas to the most level, environmentally suitable and naturally stable portion of the site. Grading activities may be restricted beyond those required by SMC 16.50.100 if necessary to ensure stability of the site.



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C. Impervious surfaces shall only be located within the site's development coverage and construction activity areas and shall be limited to a maximum of 40 percent of the lot area. The maximum lot coverage restrictions may be waived by the city council in approving a planned residential development pursuant to the zoning code.

D. All drainage systems and discharge points associated with actions shall be approved by the city engineer.

E. All grading in all landslide hazard areas shall be stabilized by October 1st of each year and may not resume until April 1st of the following year, provided that if the applicant submits documentation to substantiate that adverse impacts will not result from construction and site activity between these dates, the director may authorize certain activity.

F. Construction shall adhere to a prepared schedule to be approved with the construction plans.

G. Construction and site actions shall conform to best management practices for the types of construction or activity."

**Section 22.** That Section 1 of Ordinance No. 1544 adopted in 1992, and section 16.50.130 "Subdivision regulations", of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**"16.50.130 Subdivision regulations.**

Where a site is proposed for short subdivision or subdivision, up to 50 percent of the total site's area which is designated as being a Type I landslide hazard area (25 percent slope or greater), may be permitted for use in calculating minimum lot area for the proposed lots."

**Section 23.** That Section 1 of Ordinance No. 1544 adopted in 1992, and section 16.50.140 "Erosion control", of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**"16.50.140 Erosion control.**

All actions shall conform to the city requirements for erosion control established in SMC 16.05. Erosion control plans and the requirements of that section apply regardless of the exemption status resulting from this title."

**Section 24.** That Section 1 of Ordinance No. 1545 adopted in 1992, and section 16.52.040 "Relationship to framework ordinance", of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**"16.52.040 Relationship to framework ordinance.**

The provisions of this chapter shall apply in conjunction with SMC 16.40.030 through 16.40.210."

**Section 25.** That Section 1 of Ordinance No. 1545 adopted in 1992, and section 16.52.050 "Applicability", of the Sumner Municipal Code is hereby amended and adopted to read as follows:

**"16.52.050 Applicability.**

Seismic hazard areas are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, fault rupture, or soil liquefaction."



**Section 26.** That Section 1 of Ordinance No. 1545 adopted in 1992, and section 16.52.060 "Mapping", of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**"16.52.060 Mapping.**

Seismic hazard areas are areas where the suspected risk of earthquake induced landsliding, dynamic settlement, fault rupture, or ground deformation caused by soil liquefaction, is sufficient to require a further seismic hazard area review as set forth in SMC 16.52.090. These potential seismic hazard areas are determined using the following criteria:

A. **Earthquake Induced Landslide Hazard Areas.** Areas identified as potential landslide hazard areas in SMC 16.50.050.

B. **Liquefaction and/or Dynamic Settlement Hazard Areas.** Areas identified as high and moderate liquefaction and dynamic settlement hazard areas on the Washington Department of Natural Resources, Division of Geology and Earth Resources liquefaction and dynamic settlement hazard area Geographic Map No. 44."

**Section 27.** That Section 1 of Ordinance No. 1545 adopted in 1992, and section 16.52.090 "Regulations", of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**"16.52.090 Regulations.**

For all non-exempt activities, except the construction of wood frame structures less than 5,000 square feet and all prefabricated structures less than 2,000 square feet, proposed within seismic hazard areas, a geotechnical report prepared by a professional engineer, geologist, or engineering geologist licensed by the state of Washington with expertise in geotechnical engineering shall be submitted.

A. The geotechnical report shall address the existing geologic, topographic and hydrologic conditions on a site, including an evaluation of the ability of the soil and structure to withstand the anticipated earthquake ground shaking and subsequent effects.

B. The geotechnical report shall include a discussion of the mitigation measures which can be taken to reduce seismic risks associated with the underlying surficial geology.

C. The geotechnical report shall include an evaluation of the effectiveness of the proposed mitigation measures.

D. The development proposal may be approved, approved with conditions, or denied based on the director's evaluation of the ability of the proposed mitigation measures to reduce seismic risks associated with the underlying surficial geology.

E. The development may be approved subject to additional review of the architectural and structural drawings by the building official for conformance with the geotechnical report and recommendations.

F. Should an applicant question the presence of seismic hazard areas on site, the applicant may submit a geotechnical assessment sufficient to demonstrate to the building official's satisfaction, that the site is not located in a seismic hazard area. If the building official determines that the site is not in a seismic hazard area, the provisions of this chapter may be waived except that the requirements of SMC 16.52.070 and 16.52.080 may not be modified."



**Section 28.** That Section 1 of Ordinance No. 1551 adopted in 1992, and section 16.54.030 "Purpose", of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**"16.54.030 Purpose.**

At over 14,410 feet high, Mount Rainier dominates the skyline of the southern Puget Sound region. This glacier-clad active volcano is capable of spewing ash from pyroclastic eruptions, and generating large volumes of lahars and floods which have, in the recent geologic past, inundated various watersheds and reached the shores of Puget Sound significantly altering pre-flood conditions. The purpose of this chapter is to regulate the use of land in and around volcanic hazard areas in order to protect lives, property, and public infrastructure; and to comply with the Washington State Growth Management Act."

**Section 29.** That Section 1 of Ordinance No. 1551 adopted in 1992, and section 16.54.050 "Applicability", of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**"16.54.050 Applicability.**

Volcanic hazard areas are areas within the city which show a likelihood of lahars, debrisflows and related flooding associated with volcanic activity from Mt. Rainier."

**Section 30.** That Section 1 of Ordinance No. 1551 adopted in 1992, and section 16.54.060 "Mapping", of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**"16.54.060 Mapping.**

A. Volcanic hazard areas are those areas that, in the recent geologic past, have been inundated by a Case I or Case II lahars or other types of debris flows, according to a map showing Volcano Hazards from Mount Rainier, Washington: Pyroclastic-flow hazard zone and inundation zones for Case I, II, and III lahars, published by the U.S. Geological Survey, Revised 1998: USGS Open-File Report 98-428. Volcanic hazard areas also include areas that have not been affected recently, but could be affected by future such events. Volcanic hazard areas are classified into the following categories:

1. Inundation Zone for Case I Lahars. Areas that could be affected by cohesive lahars that originate as enormous avalanches of weak chemically altered rock from the volcano. Case I lahars can occur with or without eruptive activity. The average reoccurrence rate for Case I lahars on Mount Rainier is about 500 to 1,000 years.

2. Inundation Zone for Case II Lahars. Areas that could be affected by relatively large non-cohesive lahars, which most commonly are caused by the melting of snow and glacier ice by hot rock fragments during an eruption, but which can also have a non-eruptive origin. The average time interval between Case II lahars from Mount Rainier is near the lower end of the 100 to 500 year range, making these flows analogous to the so-called "100- year flood" commonly considered in engineering practice.

B. Time Travel Zones. The ability to evacuate people from within a volcanic hazard area correlates to the distance from the source of an event (i.e., those areas closest to the event will have less time to evacuate than those areas farther away from the source of an event) and the amount of time for evacuation from the public notification (via a warning alarm system) that a lahar event has occurred. The amount of time that is anticipated for a debris flow, lahar, flood, or



avalanche (estimated at 100 million cubic feet of volume) to travel from either the source of the event or the point where the AFM alarm is sounded is classified into the time travel zones. The City of Sumner and the urban growth area boundary are within Time Travel Zone C identified on the Pierce County Volcanic Hazard Areas Map which is based on the Bulletin of Volcanology, V. 60, P. 98-109, titled: An Empirical Method for Estimating Travel Times for Wet Volcanic Mass Flows by T.C. Pierson, 1998. Time Travel Zone C is described as follows:

1. Time Travel Zone C on the Nisqually and White River systems is that area greater than an estimated 1 1/2 hour travel distance and less than or equal to an estimated two-hour travel distance from the source of the event.

2. Time Travel Zone C on the Puyallup and Carbon River systems is that area greater than an estimated one-hour travel distance and less than or equal to a 1 1/2 hour travel distance from the point where the AFM alarm is sounded."

**Section 31.** That Section 1 of Ordinance No. 1551 adopted in 1992, and section 16.54.090 "Regulations", of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**"16.54.090 Regulations.**

A. No critical facilities shall be constructed or located in volcanic hazard areas as set forth in SMC 16.54.060. Critical facilities are those listed below:

1. Hospitals;
2. Jails and detention facilities, excluding temporary holding cells in police stations;
3. Institutional or congregate care facilities for care of greater than 50 incapacitated patients;
4. All structures with occupant load of greater than 5,000 people as established by the Uniform Building Code.

B. The applicant or property owner for a critical facility shall submit to the director, prior to occupancy of any critical facility, a written plan for evacuation of residents or occupants. The plan shall be approved by the city prior to final occupancy approval. The applicant or property owner shall also obtain and maintain a weather radio as approved by the National Oceanic and Atmospheric Administration (NOAA) for receiving notice of a lahar."

**Section 32.** That Section 1 of Ordinance No. 1546 adopted in 1992, and section 16.56.010 "Short Title", of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**"16.56.010 Short Title.**

The ordinance codified in this chapter, together with any amendments, shall be known as the "Fish and Wildlife Habitat Area Ordinance."

**Section 33.** That Section 1 of Ordinance No. 1546 adopted in 1992, and section 16.56.030 "Purpose", of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**"16.56.030 Purpose.**

The purpose of this chapter is to regulate development and the use of land in order to preserve and protect areas of critical and endangered fish and wildlife habitat; and to conform with the Washington State Growth Management Act."



**Section 34.** That Section 1 of Ordinance No. 1546 adopted in 1992, and section 16.56.050 "Applicability", of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**"16.56.050 Applicability.**

Fish and wildlife habitat areas are those areas identified as being of critical importance to maintenance of fish, wildlife, or plant species, including:

A. Areas with which federally or state listed endangered, threatened, or sensitive species of fish, wildlife, or plants have a primary association;

B. Areas with habitats and species of local importance, including the following:

1. Areas with which state listed monitor or candidate species or federally listed candidate species have a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term;

2. Special habitat areas which may provide specific habitats which certain animals and plants require such as breeding habitat, winter range, and movement corridors;

C. Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish and wildlife habitat;

D. Waters of the state, including all water bodies classified by the Washington State Department of Natural Resources water typing classification system as detailed in WAC 222-16-031;

E. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity;

F. State natural area preserves and natural resource conservation areas."

**Section 35.** That Section 1 of Ordinance No. 1546 adopted in 1992, and section 16.56.060 "Mapping", of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**"16.56.060 Mapping and Documentation.**

Fish and wildlife habitat areas shall be identified in the following documents:

A. The Washington Department of Natural Resources Water typing maps;

B. The Washington Department of Wildlife Priority Habitats and Species (PHS) Program.

C. Other appropriate documents prepared by state or federal agencies, or documents prepared by qualified professional consultants for the City."

**Section 36.** That Section 1 of Ordinance No. 1546 adopted in 1992, and section 16.56.070 "Habitat assessments", of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**"16.56.070 Habitat assessments.**

For all non-exempt activities proposed on a site which contains or is within 1,000 feet of documented habitat for threatened, endangered, or sensitive fish or wildlife species as identified by documents listed under SMC section 16.56.060, a habitat assessment, prepared by a professional fisheries or wildlife biologist, shall be submitted. The habitat assessment shall include a discussion and inventory of species or habitats known or expected to be located on or near the site."



**Section 37.** That Section 1 of Ordinance No. 1546 adopted in 1992, and section 16.56.080 "Habitat management plans", of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**"16.56.080 Habitat management plans.**

A. If the habitat assessment demonstrates to the satisfaction of the director that fish and wildlife habitat areas are not within 1,000 feet, then the development can proceed without further requirements for special fisheries or wildlife studies pursuant to this chapter. Otherwise, a habitat management plan shall be submitted. The purpose of the habitat management plan is to provide for the implementation, monitoring, and maintenance of permanent mitigation and restoration measures for fish and wildlife habitat. Habitat management plans shall be prepared by a professional wildlife biologist or fisheries biologist as determined appropriate by the director. At the discretion of the director, habitat assessments and management plans prepared for federal permits or approvals may be used to fulfill the requirements of this section. Prior to application for a permit the applicant may elect to waive the habitat assessment and submit a habitat management plan if potential habitat is known to exist. The habitat management plan shall contain at a minimum:

1. A discussion of the project's effects on fish and wildlife habitat;
2. A discussion of any federal, state, or local special management recommendations which have been developed for species or habitats located on the site;
3. A discussion of measures to preserve existing habitats and restore habitats which were degraded prior to the proposed land use activity. Restoration plans shall include at a minimum the following:
  - a. Planting and soil specifications;
  - b. Success standards; and
  - c. Contingency plans;
4. A discussion of proposed measures which mitigate the impacts of the project;
5. An evaluation of the effectiveness of the proposed mitigation and restoration measures;
6. A discussion of ongoing management practices which will protect fish and wildlife habitat after the project site has been fully developed, including proposed monitoring and maintenance programs;
7. An assessment of habitat recommendations proposed by resource agencies and their applicability to the proposal; and
8. Any additional information necessary to determine the impacts of a proposal and mitigation of the impacts.

B. Habitat management plans shall be forwarded to the appropriate state and/or federal resource agencies for review and comment.

C. Annual monitoring reports shall be provided to the City by the property owner until the mitigation and/or restoration has been in place for at least 10 years and the success standards have been met. The City shall forward the monitoring reports annually to the appropriate federal agencies along with the following:

1. A list and map of the location of development permits issued in the last calendar year;
2. The implementation status of Habitat Management Plans; and
3. The status of the habitat improvements."

**Section 38.** That Section 1 of Ordinance No. 1546 adopted in 1992, and section 16.56.090 "Regulations", of the Sumner Municipal Code are hereby amended and adopted to read as follows:



**“16.56.090 Regulations.**

Based on the habitat assessment, habitat management plan, and comments from other agencies, the director may require mitigating measures to reduce the impacts of the proposal on critical habitat and/or wildlife areas. Mitigating measures may include, but are not limited to, increased buffers, building setbacks, enhanced buffers, reduced project scope, limitations on construction hours, limitations on hours of operation, and relocation of access. Projects may be denied if the proposal is likely to result in adverse effects to a threatened or endangered fish or wildlife species; or will result in extirpation or isolation of other critical fish, wildlife, or plant species or its habitat. The authority of the State Environmental Policy Act shall provide possible mitigation for all areas of wildlife habitat not covered by this chapter.”

**Section 39.** That Sections 5 and 6 of Ordinance No. 1906 adopted in 1999, and section 16.56.100 “Buffers”, of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**“16.56.100 Buffers.**

A. Based on the information provided in the habitat management plan, buffers of undisturbed native vegetation shall be provided to insure retention of fish and wildlife habitat areas.

B. Buffers established for fish and wildlife habitat areas shall be established by the director in order to provide adequate protection of the resource. The buffer shall be established in consultation with state and federal resource agencies. Buffers established by other regulations in this title shall be given substantial weight towards addressing the mitigation of fish and wildlife and habitat impacts.

C. Buffers, consisting of undisturbed native vegetation, shall be required along all streams, lakes and ponds as classified by the DNR water typing classification system (WAC 222-16-031). The buffer shall extend landward from the ordinary high water mark of the water body. The buffer shall not extend landward beyond a public right-of-way that contains an improved street. The buffer shall be separated from adjacent private property by a physical barrier such as, but not limited to, a pathway, berm, vegetation, or fence. The barrier shall be designed to allow for the movement of fish and wildlife and shall be approved by the director. The width of the buffer shall be established by the chart below. The buffer shall be established by a permanent protective easement, public or private land trust dedication, or similar protective mechanism as approved by the director. An easement shall also be provided by the underlying property owner that grants the City access to the buffer for the placement of further conservation/restoration measures.

DNR Water Type	Buffer Width Feet
3	100
4	50
5	25

D. For projects in areas subject to the requirements of the Sumner Shoreline Master Program, the buffer widths and applicable regulations shall be established in the Sumner Shoreline Master Program.

E. Buffers for Type 4 and 5 streams which are not required by other regulations, may be modified by the director upon a showing that the following are satisfied:

1. Fish, wildlife and plant habitat will not be harmed by the reduction in buffer area based on the proposed use and site development proposed;



2. The buffer area includes enhancement measures to improve the functional attributes of the buffer through the use of plantings of native plant species. The improvements must be shown to improve the habitat conditions for wildlife;

3. A best management practices plan addressing the proper design, layout, construction and use of the site is provided which is sufficient to mitigate impacts to wildlife and habitat areas;

4. Under no circumstance shall the buffer be reduced below those shown in the table below:

<b>DNR Water Type</b>	<b>Buffer Width Feet.</b>
4	25
5	20

F. Buffers for Type 3 streams which are not required by other regulations, may be modified upon approval of a variance per SMC 16.40.120 and a showing that the following are satisfied:

1. The subject parcel is less than 200 feet in depth as measured perpendicular from the ordinary high water mark;

2. The buffer is not reduced below 75 feet;

3. The impervious surface of the reduced portion of the buffer shall not exceed 10 percent unless the following measures are taken:

a. The removal of an equivalent amount of existing impervious surface within the sub basin of the Type 3 stream; and

b. The permanent set aside and habitat restoration of area(s) where impervious surface has been removed.

4. Appropriate federal agencies shall be consulted if requirements of subsections (2) or (3) are not possible.

5. Fish, wildlife and plant habitat will not be harmed by the reduction in buffer area based on the proposed use and site development proposed;

6. The buffer area includes enhancement measures to improve the functional attributes of the buffer through the use of plantings of native plant species. The improvements must be shown to improve the habitat conditions for wildlife;

7. A best management practices plan addressing the proper design, layout, construction and use of the site is provided which is sufficient to mitigate impacts to wildlife and habitat areas;

G. The following uses are allowed in fish and wildlife buffers:

1. Activities directly related to the cultural, recreational, scientific and educational aspects of the stream and which have a minimal adverse impact on the buffer and wildlife area. These may include passive recreational facilities, trails, view points, short-term scientific or educational facilities, and sports fishing and hunting;

2. Public utility corridors and large scale public recreational facilities such as regional trails and parks may be allowed in buffer areas, provided that the proposal is subject to review under the State Environmental Policy Act, and that the structure and function of impacted fish and wildlife habitat is replaced and restored; and that appropriate federal agencies are notified of the project."

**Section 40.** That Section 1 of Ordinance No. 1547 adopted in 1992, and section 16.58.100 "Exemptions", of the Sumner Municipal Code are hereby amended and adopted to read as follows:



**“16.58.100 Exemptions.**

The exemptions of SMC 16.40.100 do not apply to this chapter See SMC 16.58.110 for exemptions.”

**Section 41.** That Section 1 of Ordinance No. 1547 adopted in 1992, and section 16.58.110 “Regulations”, of the Sumner Municipal Code are hereby amended and adopted to read as follows:

**“16.58.110 Regulations.**

The regulations of chapter 15.52 SMC apply to flood hazard areas, except as modified below:

A. No encroachments, filling, new construction, or substantial improvements shall be permitted in floodways, except as follows:

1. Work done by or for a public agency or utility; such as bridges, flood control works, revetments, retaining walls, drainage structures, or other structures necessary to promote the public's health, safety, and welfare when the improvements do not obstruct the floodway, increase the water surface elevation more than one foot, or cause an adverse impact to adjacent, cross-channel or downstream properties, and the improvements utilize appropriate flood hazard protection standards;

2. Agricultural uses or recreational facilities that do not require the installation of utilities or structures;

3. Repair, maintenance and interior remodels to an existing structure that do not increase the ground floor area or overall square footage of the structure.

B. Activities within a flood hazard area adjacent to the White or Puyallup Rivers are not permitted unless flood control improvements are constructed to standards established by the Pierce County Water Programs River Improvement and accepted by them for maintenance. Construction of additional improvements, such as access roads may also be required.”

**Section 42.** That Section 1 of Ordinance No. 1547 adopted in 1992, and section 16.58.130 “Additional Studies”, of the Sumner Municipal Code are hereby repealed:

**“16.58.130 Additional studies.**

~~The city council directs the community development department to work with Pierce County and other organizations to assess alternative methods of regulating development in frequently flooded areas. The assessment shall examine the need for additional regulation, examples of regulatory approaches from adjacent jurisdictions, and an analysis of the effects on development potential in and around Sumner. The department shall provide a status report on these efforts January 1993 and shall propose specific floodplain planning policies in the comprehensive plan.”~~

**Section 43. Severability.** Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or invalid for any reason, or should any portion of this ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.



**Section 44**   **Effective Date.** This ordinance shall take effect five (5) days from and after its passage, approval and publication as provided by law.


Passed by the City Council and approved by the Mayor of the City of Sumner, Washington, at a regular meeting thereof this 15<sup>th</sup> day of December, 2003.

  
\_\_\_\_\_  
Mayor

Attest:

  
\_\_\_\_\_  
City Clerk

Approved as to form:

  
\_\_\_\_\_  
City Attorney

First Reading:	December 15, 2003
Date Adopted:	December 15, 2003
Date of Publication	December 18, 2003
Effective Date:	December 23, 2004